ed injuries to a lesser extent. The second appellant sustained a cut wound to his face when the other son swung his ornamental samurai sword at the intruders.

Fortunately for the occupants of the house, a police party was nearby on their nightly burglary patrol. On hearing the commotion from the house, they quickly went towards that house with torches shining. On seeing the police approaching, the third appellant shouted a warning to his companions and all five men broke off and ran away in different directions.

In his attempted escape the second appellant fell off a small cliff and was injured in the leg. He tells us this afternoon that he has sustained a permanent injury to the leg and can now only walk with a limp. The third appellant and three other culprits hid in a hut at the back of the first appellant's house and was provided not only food but also food until some time later when they were discovered by the police. The third appellant was then arrested.

Nothing could be said in mitigation for any of the appellants except for their ready pleas of guilty. They all have clear records but then for those people who had entered Brunei illegally and for short periods, it is not expected that they would have any records.

Mr. Leong cited three authorities to us. The first one is *R.* v. *Burnett*[1] where it was held that a starting point of ten years is correct for a robbery in a private house. We do not find this case of much assistance to us because social circumstances in England are very different from those in this country. Two other High Court cases of Brunei are directly in point: *Public Prosecutor* v. *Sawmill Ringgip*[2] and *Public Prosecutor* v. *Wan Razali.*[3] In both of these cases, Mr. Commissioner Liu sentenced the defendants to 12 years' imprisonment. It is to be noted that in these two cases none of the victims were injured.

We are of the view that the sentences imposed upon the appellants are entirely correct. If they had pleaded not guilty, a sentence of 15 years would have been appropriate for a gang robbery of this nature. In all the circumstances, we see no merit in these appeals and they are accordingly dismissed.

*Appeal dismissed.*

## MALAYSIAN REPORTS

### CHONG SOOI CHUEN v. YUEN LAI CHUN

**[S.C. (Lee Hun Hoe C.J. (Borneo), Seah & Syed Agil Barakbah S.C.JJ.) 4 February & 31 May 1988]**

**[Kuala Lumpur – Civil Appeal No. 17 of 1985]**

*Civil Procedure – Appeal on questions of fact – Decision based on credibility of witnesses – Appeal court slow to interfere.*

In this case, the respondent was the widow of one Kong Foo Chai, deceased. The deceased had been granted land and had entered into an agreement with one Chong Kam to clear the land and plant rubber trees. The deceased promised to pay Chong Kam $1,000 for looking after the rubber trees. The deceased was unable to pay the $1,000 when he died. After the death of the deceased, the respondent tried to pay off the $1,000 but Chong Kam asked for more. Later, the respondent found the appellant tapping the rubber trees. She asked him to leave but he refused. The appellant claimed that he and Chong Kam had purchased the land from the deceased for $500 and that the appellant had contributed half the amount. The respondent brought an action to recover possession of the land. The learned judge of the High Court gave judgment for the respondent. The appellant appealed.

**Held**, dismissing the appeal: (1) the learned judge had seen and heard the witnesses and would be in a better position to assess their credibilities. In such a case, the appellate court should be slow to interfere;

(2) the learned judge was clearly not impressed by the appellant as he was with the respondent. He was not convinced that the appellant had paid any money to the deceased. He was satisfied on the oral and documentary evidence that the respondent had established her case against the appellant. The court was unable to find any reason to interfere with the finding of the learned judge.

SUPREME COURT.

*Lim Seong Chun* for the appellant.

*Lim Boon Seng* for the respondent.

*Cur. Adv. Vult.*

**Lee Hun Hoe C.J. (Borneo)** (delivering the judgment of the court): This is an appeal against the decision of the learned judge ordering delivery of vacant possession of two pieces of land situated at Sungai Durian in the Mukim of Tanjong Tualang, Perak and described as Geran Mukim GM 249 No. 41061 and Geran Mukim GM 250 No. 41062 ("the said land").

The respondent/plaintiff is the widow of Kong Foo Chai (deceased) who died on 9 March 1961. She was appointed administratrix of his estate. In that capacity she sued the appellant/first defendant and his brother, the second defendant, for occupying "the said land" and prayed

for vacant possession of "the said land" and for damages. The second defendant died on 11 December 1979 and the suit against him was discontinued.

In 1957, for services rendered as a special constable, the deceased was granted "the said land" by the government for planting rubber trees under a land scheme. The titles to "the said land" were issued on 11 December 1972. Each title covers an area of over five acres. Attached to each title is the condition that the land is not to be transferred, charged or leased except with the permission of the Menteri Besar.

According to the plaintiff, after the deceased was granted "the said land" he discussed the matter with her. It was decided that they should employ someone to clear "the said land" for cultivation as their children were too young and would not be able to help. At the time, she was also pregnant. The deceased's friend Choong Kam was asked to help to clear the land and plant rubber trees. He promised to look after the rubber trees for four years and they would pay him $1,000. The deceased was unable to pay the $1,000 when he died. The respondent tried to pay off the $1,000 but Choong Kam asked for $2,800. This amount was increased to $4,000 and eventually to $10,000. The respondent was unable to raise the amount. Choong Kam died on 15 October 1980.

In 1965, the respondent went to "the said land" and found the appellant tapping the rubber trees. She asked him to stop tapping but he refused. She put up four galvanished tin signboards prohibiting trespassers and tapping of the rubber trees. Later, she found the signboards missing and rubber trees being tapped. In 1977, the replanting board approved replanting of rubber trees in "the said land". She went to "the said land" and told the appellant that she wanted to cut down the old rubber trees and to do replanting as she was granted replanting grants. The appellant threatened to harm her if she did so. She went to the Land Office in Batu Gajah and was advised to seek legal advice. Notices were issued to the appellant and the second defendant to vacate "the said land". When they failed to comply with the notices, she sued them.

The defence is that the appellant and the second defendant had purchased "the said land" from the deceased for $500, and that the appellant had contributed half of the amount. Further, the appellant said he had been paying the quit rent since. Also, he had been cultivating "the said land" and enjoying the profits therefrom. It was alleged that in order to avoid the forfeiture of the land by the Collector of Land Revenue, the deceased requested them to clear "the said land" and to plant rubber trees thereon upon the condition that he was to hold "the said land" upon trust for their benefit. In consideration thereof, they jointly paid him the $500. An agreement dated 13 March 1957 was executed by the deceased and the second defendant.

The learned judge has seen and heard the witnesses and would be in a better position to assess their credibilities. In such a case, the appellate court should be slow to interfere. The learned judge was clearly not impressed by the appellant as he was by the respondent. He was not convinced that the appellant had paid any money to the deceased. He was satisfied on the oral and documentary evidence that the respondent had established her case against the appellant. As regards the agreement, the learned judge observed at p. 158 of the appeal record as follows:

> "... The agreement of 13 March 1957 makes no mention of any sum having been paid to the plaintiff's husband and the agreement is between the plaintiff's husband and the second defendant only. No mention is made whatsoever of the first defendant..."

The appellant explained that no sum was mentioned because the deceased was afraid the government would know about it and that he was not mentioned in the agreement as he was ill at the time. The learned judge did not find the explanation plausible or possible. He went on further at the same page to say that:

> "... In the first place the agreement of 13 March 1957 is not a sale and purchase agreement. It is an arrangement between the parties allowing the second defendant to cultivate the land with a statement by the plaintiff's husband that he was willing to transfer the land to the second defendant. The agreement is not a complete agreement – perhaps because of the restriction in the original grant given to the plaintiff's husband by the government."

He found insufficient evidence to support the appellant's conclusion that he had an unrevocable licence or an equity on "the said land". On the evidence before him, he was of the view that the appellant was a trespasser on "the said land" or at the very best a licensee without any interest on "the said land" free of any rent while enjoying the fruits thereof. In the event, he gave judgment for the respondent with costs and ordered the appellant to give vacant possession of "the said land" forthwith and ordered the damages to be assessed at a later date. He also dismissed the counterclaim with costs.

We have delayed our judgment to enable the respondent to take action against the second defendant's representative. We understand the latter had failed to enter an appearance and that the respondent had applied for judgment in default. The application will be heard by the High Court in Ipoh on 8 July 1988. We feel that we have delayed our judgment long enough.

We are unable to find any reason to interfere with the finding of the learned judge. We would therefore dismiss the appeal with costs. We would confirm the decision of the learned judge ordering the appellant to give vacant possession of the said land forthwith and that damages be assessed later. We would also dismiss the counterclaim with costs. Deposit to the respondent on account of taxed costs.

*Appeal dismissed.*

Solicitors: *Lim Seong Chun & Co.; Lim Boon Seng.*

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## K.S. DAS v. P. SUPPIAH

**[S.C. (Salleh Abas L.P., Mohamed Azmi & Wan Hamzah S.C.JJ.) 22 March & 25 May 1988]**

**[Johor Bahru – Supreme Court Civil Appeal No. 459 of 1957]**

*Civil Procedure – Judgment obtained in Singapore – Judgment registered in Johor Bahru High Court – Judgment wholly satisfied by registration of transfer of property before the judgment was registered – Application to set aside registration of judgment – Reciprocal Enforcement of Judgments Act 1958, ss. 4(1)(a) & 5(1).*

In this case, the respondent had obtained judgment in the Singapore High Court in the sum of $149, 520 and costs against the appellant. The judgment was registered in the Johore High Court under the Reciprocal Enforcement of Judgments Act 1958. The appellant applied for an order to set aside the registration of the judgment on the ground that it had been fully satisfied by the transfer of land to the respondent about two months after the judgment was pronounced in Singapore and about one month before the respondent obtained the order for its registration. The judge of the Johore High Court directed the appellant to file an action in Singapore to set aside the Singapore judgment on the ground that it had been fully satisfied. The appellant appealed against this decision.

**Held**, allowing the appeal: when the judgment was registered in the Johore Bahru High Court, it had already been wholly satisfied by the registration of the transfer of the property to the respondent and therefore by virtue of section 4(1)(a) of the Reciprocal Enforcement of Judgments Act 1958, it had been registered in contravention of the Act and under section 5(1) the registration of the judgment should be set aside.

*Case referred to:*

(1) *Joginder Singh, P. Suppiah and Arul Chandran* v. *Tara Rajaratnam* [1986] 1 M.L.J. 105.

SUPREME COURT.

*George Puthucheary* for the appellant.

Respondent in person.

*Cur. Adv. Vult.*

**Wan Hamzah S.C.J.** (delivering the judgment of the court): On 5 May 1975, the respondent obtained judgment in the Singapore High Court in Civil Suit No. 1224/1975 in the sum of $149,520 and costs against the appellant. On 26 August 1975, the respondent obtained an order in the Johor Bahru High Court for the registration of that judgment under the Reciprocal Enforcement of Judgments Act 1958 ("the Act"), and accordingly it was registered in the Johor Bahru High Court on 16 September 1975 as Foreign Judgment No. 3/1975. On 7 June 1987, the appellant applied in the Johor Bahru High Court for an order to set aside the registration of the judment on the ground that it had been fully satisfied when land held under Certificate of Title No. 13817, Mukim of Senai in the state of Johor was transferred to the respondent on 22 July 1975, *i.e.* about two months after the judgment was pronounced and about one month before the respondent obtained the order for its registration. On 5 September 1987, the Johor Bahru High Court judge gave his decision on the application. He did not make an order to set aside the registration but directed the appellant to "file an action at the High Court of Singapore to set aside the judgment and order of the said court dated 5 May 1975 in Suit No. 1224 of 1975 on the ground that the judgment has been fully satisfied". Against that decision, the appellant now appeals to the Supreme Court. At the hearing of this appeal before us, the respondent appeared in person and argued his case. He and counsel for the appellant told us that the parties agreed that the facts found by the court in the Privy Council appeal case of *Joginder Singh, P. Suppiah and Arul Chandran* v. *Tara Rajaratnam*[1] should be accepted as the facts for the present case.